

V. SUMMARY OF LAWS GUIDING PARK MANAGEMENT

There are many federal and state statutes, state and federal executive orders, and administrative rules and policies that govern the operation of the state parks system. This chapter includes a brief discussion of the primary legal basis for the existence and operation of the state parks system as well as other laws that particularly concern Lumber River State Park.

STATE LEGAL MANDATES

North Carolina Constitution

Article XIV, Section 5 of the North Carolina Constitution sets overall policy by broadly defining the conservation and protection of natural resources and the acquisition of such resources as a proper function of government. The amendment reads in part as follows:

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivision to acquire and preserve park, recreation, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, open land, and places of beauty.

State Parks Act

The State Parks Act (G.S. 113-44.7 through 113-44.14) sets forth a mission statement for the state parks system. It states that the system functions to preserve and manage representative examples of significant biological, geological, scenic, archaeological, and recreational resources, and that park lands are to be used by the people of the state and their visitors and descendants in order to promote understanding of and pride in the state's natural heritage.

The State Parks Act also calls for development and periodic revisions of a system plan to achieve the mission and purpose of the state parks system in a reasonable, timely, and cost-efficient manner. The Act describes the System Plan components and requires that public participation be a component of plan development and revisions.

The State Parks Act also calls for the classification of park resources and development of general management plans (GMPs) for each park. GMPs are to include a statement of park

purpose, an analysis of major resources and facilities, and a statement of management direction.

Powers and Duties of the Department of Environment and Natural Resources

The Department is authorized to make investigations of the resources of the state and to take such measures as it may deem best suited to promote the conservation and development of such resources. In addition, the Department may care for state forests and parks and other recreational areas now owned, or to be acquired by, the state. (G.S. 113-8)

The Natural And Scenic Rivers Act

The Natural and Scenic Rivers Act (G.S. 113A-30 through 113A-44) was passed in 1971 by the General Assembly to preserve and protect outstanding free-flowing rivers, their water quality, and their adjacent lands for the benefit of present and future generations. The Act seeks to protect rivers with outstanding natural, scenic, education, geological, recreational, historic, scientific, and cultural values, as well as fish and wildlife.

In passing the Act, the General Assembly recognized the “. . . *necessity for a rational balance between the conduct of man and the preservation of the natural beauty along the many rivers of the State,*” and “. . . *that the preservation of certain rivers or segments of rivers in their natural and scenic condition constitutes a beneficial public purpose.*” The Act establishes a Natural and Scenic Rivers System and prescribes methods for including components. Rivers may only be added to the system by action of the General Assembly.

The Natural and Scenic Rivers Act defines three classes of rivers as being eligible for inclusion in the Natural and Scenic Rivers System: natural river areas, scenic river areas, and recreational river areas. The 1989 General Assembly designated 115 miles of the Lumber River as a component of the Natural and Scenic Rivers System. The designation included natural, scenic, and recreational segments.

The Natural and Scenic Rivers Act is not a regulatory act. No land-use controls or zoning are part of the Act. The Natural and Scenic Rivers Act does offer protection for designated river segments by restricting project works, such as dams, reservoirs, water conduits, transmission lines, and water resources projects that would have direct and adverse affects; by permitting acquisition of riparian lands in either fee simple or lesser interests, such as conservation easements; and by management activities that may be instituted by the state in performing its duties and responsibilities. Of the three types of protection authorized by the Natural and Scenic Rivers Act, only the restriction on project works automatically occurs upon designation. Riparian lands are not affected until acquisition of land or interests in land takes place by the state.

State Nature and Historic Preserve Dedication Act

The State Nature and Historic Preserve Dedication Act (G.S. 143-260.6) was authorized by Article 14, Section 5 of the North Carolina Constitution. It seeks to ensure that lands and

waters acquired and preserved for park, recreational, and scenic areas for the purpose of controlling and limiting the pollution of air and water, controlling excessive noise, and in every other appropriate way preserving as a part of the common heritage of the state, continue to be used for those purposes. The State Nature and Historic Preserve Act provides a strong legal tool for protecting lands from incompatible uses. The addition and removal of lands to and from the State Nature and Historic Preserve require a vote of three-fifths of the members of each house of the General Assembly. All land and water within the park boundaries as of May 6, 2003, are protected by the State Nature and Historic Preserve Dedication Act.

Nature Preserves Act

The Nature Preserves Act (1985, G.S. 113A-164) prescribes methods by which nature preserves may be dedicated for the benefit of present and future citizens of North Carolina. It authorizes a Natural Heritage Program to provide assistance in the selection and nomination for registration or dedication of natural areas.

The state may accept the dedication of outstanding natural areas by gift, grant, or purchase of fee simple title or other interest in land. Lands dedicated are held in trust by the state and are managed and protected according to regulations. They may not be used for any purpose inconsistent with the provision of the Nature Preserves Act or disposed of by the state without a finding by the Governor and Council of State that the other use or disposition is in the best interest of the state.

At the present time, 1340 acres of Lumber River State Park is dedicated as a nature preserve. The Piney Island/Net Hold Dedicated Nature Preserve, dedicated in 1995, contains a portion of the river and its floodplain communities. The preserve stretches from State Road 2121 downstream to Boardman.

North Carolina Environmental Policy Act of 1971

Recognizing the profound influence that human activity has on the natural environment, the General Assembly passed the Environmental Policy Act "*to assure that an environment of high quality will be maintained for the health and well-being of all...*" The Act declares that:

It shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all its citizens safe, healthful, productive, and aesthetically pleasing surroundings; to attain the widest possible range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (G.S. 113A-3)

Archaeological Resources Protection Act

The Lumber River State Park area is known to have been occupied by American Indian tribes. The area also contains some cultural resources associated with early settlements. Unknown archaeological resources may also exist, both within the existing park boundaries and in nearby areas. Development of recreational facilities should avoid destruction of these resources.

A permit is required from the Department of Administration, in consultation with the Department of Cultural Resources, to excavate, remove, damage, or alter any archaeological resource on state lands. Archaeological resources are defined as the remains of past human life or activities that are at least 50 years old and are of archaeological interest (G.S. 70-10).

While there are other General Statutes that concern the state parks system and the environment, the above-described statutes, along with Article XIV, Section 5, of the North Carolina Constitution, largely define the purposes of the state parks system and serve to guide the operation of state park system units.

FEDERAL LAWS

The Americans With Disabilities Act

Title II of the ADA prohibits discrimination against any "*qualified individual with a disability*."

New Construction and Alterations

Buildings that are constructed or altered by, on behalf of, or for the use of a public entity shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities. (Section 35.151 of Title II)

Existing Facilities

Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible. ("Structural changes" include all physical changes to a facility [28 CFR Part 35, Section 35.150, Title II of the ADA Section-by-Section Analysis].)

When alterations affect access to a primary function of a facility, the entity shall also make alterations to the path of travel to the area and bathrooms, public telephones, and drinking fountains serving the altered area.

Programs and Services

....each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities.

(Title II, Section 35.150)

This includes, but is not limited to, the provision of auxiliary aids and services, including services and devices for effective communication where necessary to afford persons with disabilities an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by a public entity.

Signs

A public entity must ensure that persons with impaired vision and hearing can obtain information regarding the location of accessible services, activities, and facilities. Signs must be provided at all inaccessible entrances to each facility directing users to an accessible entrance or to a location where information can be obtained about accessible facilities. The international symbol for accessibility must be used at each accessible entrance to a facility. (Title II, Section 35.163)

Clean Water Act

Lumber River State Park's sensitive wetland areas receive some protection from Section 404 of the federal Clean Water Act. The Act prohibits the discharge of dredge or fill materials into waters, including wetlands, without a permit from the U.S. Army Corps of Engineers. Activities in wetlands for which permits may be required include but are not limited to: placement of fill material; ditching activities; land clearing involving relocation of soil material; land leveling; most road construction; and dam construction (33 USC 1344). The Division will avoid undertaking construction located in wetlands unless there is no practical alternative and all practical measures are taken to minimize harm to the wetland.

Wild And Scenic Rivers Act

Enacted in 1968, The Wild and Scenic Rivers Act (WSRA) was intended to preserve selected free-flowing rivers in their natural condition for the use and enjoyment of the public. This alternative to dam construction was intended to balance the nation's water resources development policies with river conservation and recreation goals. Designated rivers receive protection from new hydropower projects, federal water projects, and other federally assisted water resource projects — defined as grants, licenses, permits or funding — that would alter the river's free-flowing characteristics, or have a direct and adverse effect on the river's outstanding resources. (www.nps.gov/rivers/)

In 1998, 81 of the 115 miles of the Lumber River were federally designated. Segments through the City of Lumberton and Fair Buff were given *recreational* designation, with *scenic* designation granted to the remainder. The Lumber River was designated by administrative action of the Secretary of the Interior under Section 2(a)(ii), to be managed by the state rather than the federal government.

LOCAL LAWS

To protect the Lumber River and in order to obtain federal designation of the Lumber River through Lumberton, on May 11, 1998, the City of Lumberton passed a specified resolution amending its land use ordinance by adding the Lumber River Protection Overlay District. The district includes the Lumber River within the City of Lumberton as well as the city's extraterritorial jurisdiction. This segment extends from Back Swamp (river mile 56) to Jacob Swamp Canal (river mile 73) and includes a 100 foot buffer strip along both sides of the river.

The Lumber River Protection Overlay District establishes standards and requirements for the use and conservation of land and water within the district. The ordinance addresses new development of buildings and septic systems, excavation or mining, and disturbance of vegetation, scenic areas, and fish and wildlife habitat.